

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8123 of 1997  
with  
SPECIAL CIVIL APPLICATION No 8124 of 1997  
with  
SPECIAL CIVIL APPLICATION No 8125 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?  
No.

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ANDHJAN VIVIDHLAXI TALIM                      KENDRA

Versus

PUSHPABEN N CHANDALIA

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Appearance:

MR SURESH M SHAH for Petitioner  
MR DH VAGHELA for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
MR DA BAMBHANIA for Respondent No. 3

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 19/08/98

CAV COMMON JUDGEMENT

Rule. Mr. D.H. Vaghela, learned advocate waives service of notice of rule on behalf of respondent no.1, Mr. D.A. Bambhania, learned AGP waives service of notice of rule on behalf of respondents no.2 and 3, in

each of these three petitions.

2. The petitioner is one and the same and the respondent no.1 in each of the petitions was the employee of the petitioner. The orders, passed by the competent authority under the Payment of Gratuity Act, 1972 against the petitioner to pay the gratuity to the respondent no.1 and which have been confirmed by the appellate authority, are being challenged in these three petitions. Hence, these three petitions are heard together with consent of parties and they are being disposed of by this common judgment.

3. The petitioner-Andhjan Vividhlaxi Talim Kendra is a Public Trust, registered under the Bombay Public Trust Act, 1950. The respondent in Petition No.8124/97 was working in the workshop of the petitioner, whereas, the respondent no.1 in each of Petitions No.8123/97 and 8125/97 was working in the hostel section of the petitioner. The petitioner is having about 106 persons as trainees. Out of these 106 persons, 80 persons totally blind whereas 26 persons are partially blind and physically handicapped. It is claim of the petitioner that petitioner is imparting training to the said 106 students in weaving, binding note-books and preparing register. The production which come on account of said training is being sold. It is claim of the petitioner that petitioner is not an establishment under the provisions of section 1(3)(b) of the Payment of Gratuity Act, 1972 and consequently, it could not be fall within the perview of the Payment of Gratuity Act, 1972. It is contended that petitioner is not a commercial establishment and is not an establishment within the meaning of the Bombay Shops and Establishments Act. It is therefore contended that the decision taken by the respondent no.2 in holding the petitioner liable to pay the gratuity to the respondent no.1 in each petitions and which has been confirmed by the respondent no.2 is illegal and invalid. Petitions, therefore, deserves to be allowed and the impugned orders be quashed and set aside.

4. As against this, it is contended on behalf of the respondent no.1 that the orders passed by the respondent no.2 is quite legal and no interference is called for with the said order by exercising powers under Article 226 and 227 of Constitution of India. It is further contended that the petitioner's claim that it does not fall within the perview of the provisions of Payment of Gratuity Act, 1972 is illegal and improper and the same deserves to be rejected.

5. In order to consider the controversy between the parties, it is necessary to consider the provisions of section 1(3)(b) of the Payment of Gratuity Act, 1972 as well as the provisions of the Bombay Shops and Establishments Act. The provisions of section 1(3)(b) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act of 1972) is as under:

"(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;"

If the above provisions of section 1(3)(b) is considered, then it would be quite clear that in order to have the application of the Payment of Gratuity Act, 1972, the employer must be either a shop or an establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State. It is very pertinent to note that the word used is of any law in force in relation to shops and establishments. When the word "any" is used, it indicates that the law may be either in relation to shops or in relation to establishments. The section 1(3)(b) does not lay down that it must be a law of both the shops and establishments. If that was intended or meant by the section that the law must be applicable to both then in that case instead of "any" the word "the" would come.

6. No doubt the learned advocate for the petitioner has put reliance on the definitions of "establishment", "commercial establishment" given in sub-section 4 & 8 of section 2 of the Bombay Shops & Establishments Act. The said definitions given under sub-section 4 and sub-section 8 of the Bombay Shops & Establishments Act, 1948 (hereinafter referred to as the Act, 1948) are as under:

"(4) "Commercial establishment" means an establishment which carries on any business, trade or profession or any work in connection with or incidental or ancillary to, any business, trade or profession and includes a society registered under the Societies Registration Act, 1860 (XXI of 1860) and a charitable or other trust, whether registered or not, which carries on (whether for purposes of gain or not, any

business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment."

"(8) "Establishment" means a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement, or entertainment to which this Act applies and includes such other establishment as the State Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act;"

If the above definitions are read then it would be quite clear that sub-section 4 is giving the definition of Commercial Establishment whereas sub-section 8 is giving the definition of Establishment. But it must be remembered that the definitions given under the said Act of 1948, are for the purpose of deciding and considering the claim or liability under the said Act of 1948. If the definition given in sub-section 4 of the said Act of 1948 is taken into consideration then the present petitioner could come within the said definition.

7. The learned advocate for the petitioner Mr. Shah has cited before me the case of WADHWAN MAHAJAN PANJRAPOLE Vs. B.D. BHAVASAR & OTHERS - 1994(2) G.L.R. 1418. The head note of the said case is running as under:

"With reference to the statutory material if it is found out that the establishment like Panjrapole if at all it is referred to as an establishment, will not fall within the definition of commercial establishment, obviously the Gratuity Act will not apply to the petitioner."

"The Charitable or other Trusts whether registered or not or Society under the Societies Registration Act, 1960 has to be shown as engaged in activity related to the business, trade, profession or work in connection with or incidental or ancillary thereto."

"When it could not be shown that Panjrapole is doing either business or trade or profession or any work in connection with or incidental or ancillary to it, obviously, it will be covered by that definition."

If the above head note is considered, then it would be quite clear that in view of the facts of the case, the Learned Single Judge of this court has found that Panjarapole is not an establishment falling within the definition of Commercial Establishment and consequently the provisions of the Act of 1972 will not be applicable to the same. The Learned Single Judge has also made it quite clear that in order to come within the purview of the said Act of 1972, it must be shown that the Trust is engaged in activity related to the business, trade or profession or work in connection with or incidental or ancillary thereto. But, I am unable to accept the contention of Mr. Shah, learned advocate for the petitioner that the said case is applicable to the facts before me and that the petitioner is to be treated equally as the petitioner in that petition.

8. The petitioner was directed to produce its Constitution and accordingly the same is produced before me. The Aims and Objectives of the petitioner's institution as per the Constitution are as under:

"(A) To do all activities relating to academic education and vocational training of persons with visual disabilities."

"(B) To help such institution having same type of aims and object."

"(C) To construct residential building or building for poor blind persons of sufficient amount of funds is available."

"(D) To run cottage industries for providing remunerative employment for persons with visual disability."

Out of the four objects mentioned in the said constitution, the fourth object clearly shows that it is the aim of the institute to run a cottage industry. Now alongwith the said aims and objects of the petitioner's institute, the evidence which has come on the record during the inquiry held by the competent authority is to be considered as had been considered by the competent authority. It has come in the evidence of the workmen Bhavanjibhai that the work of stationary, napkins, towels, registers, notebooks are carried out. Shri Maganbhai Gangadas was examined on behalf of the

Institute has stated that institution prepares note-books, towels, stationary etc. and those institution which are prepared to accept readymade goods, they are supplied readymade goods and rest as per the order placed by them. The other witness Arvindbhai has also given the same admission about the preparation and selling of stationary, note-books, napkins and towels. The competent authority has also found that on the documents produced by the institution, it has been mentioned that the institution is a training cum production centre. Now, in view of the said evidence coming on record, the competent authority has come to the conclusion that the petitioner is liable to pay the gratuity and it falls within the perview of the said Act of 1972. The said conclusion recorded by the competent authority could not be said to be either perverse or grossly errorneous resulting into miscarriage of justice so as to interfere with the same by exercising the powers under Article 226 and 227 of the Constitution of India.

9. The Apex Court has considered the provisions of sub-section 1(3)(b) of Payment of Gratuity Act, 1972 in the case of STATE OF PUNJAB Vs. THE LABOUR COURT, JULLUNDUR - A.I.R. 1979 S.C. 1981. The head-note of the said case is as under:

"S. 1(3)(b) of Payment of Gratuity Act applies to every establishment within the meaning of any law for the time being in force in relation to establishments in a State. Such an establishment would include an industrial establishment within the meaning of S. 2(ii) (g) of the Payment of Wages Act. Thus the Hydel Upper Bari Doab Construction Project is such an establishment, and the Payment of Gratuity Act applies to it."

In view of the above interpretation of section 1(3)(b) of the Act of 1972 by the Apex Court, in order to come within the perview of the Act, 1972, it is not at all necessary that the institute should be a commercial institute. Though the constitution of the petitioner clearly shows that it has object of becoming a commercial institute as it want to become an industry.

10. The learned advocate for the petitioner Mr. Shah has also brought to my notice the decision of the Apex Court in the case of DR. DEVENDRA M. SURTI Vs. THE STATE OF GUJARAT - 1969 G.L.R. 156. But in the said case there was consideration as to whether a doctor's dispensary could be a commercial establishment within the provisions of section 2(4) of the Bombay Shops and

Establishments Act, for the purpose of enforcement of that Act. The Apex Court has answered the said issue in negative. Therefore, the said case is not of much help to the petitioner.

11. The learned advocate for the respondent Mr. Vaghela has also put reliance on the case of this court (Smt.) Jayaben Suryakant Modi Vs. Welfare Commissioner & Others - 1996(2) G.L.H. 215. In that case the Learned Single Judge of this court has held that the Gujarat Welfare Labour Board is an establishment under section 1(3)(b) of the Act of 1972.

12. Mr. Shah, the learned advocate for the petitioner contended before me that the learned Single Judge ought not to have taken a different view than the view taken in the earlier decision of Wadhwan Mahajan Panjarapole Vs. B.D. Bhavasar & Others - 1994(2) G.L.R. 1418. As a matter of fact, the case of 1994(2) G.L.R. 1418 was not at all cited before the learned Single Judge, when he was considering the case of Smt. Jayaben Suryakant Modi (Supra). The case which was cited before the learned Single Judge was of Ahmedabad Panjarapole Vs. Mazdoor Sabha and in that case the Division Bench of this court has held that the Public Trusts or Charitable Institution like Panjarapole is in view of its activities an "industry" within the meaning of section 2(j) of the Industrial Disputes Act, and it was also a Commercial Establishment. Therefore, the contention of Mr. Shah raised on the strength decision of the Apex Court in the case of SOMABHAI MATHURBHAI PATEL Vs. NEW SHORROCK MILLS - 1983 G.L.H. 273, not to consider the decision of the learned Single Judge is not acceptable.

13. Thus, in view of the above discussion, I hold that the petitioner has been rightly held as an establishment covered by the provisions of the Act of 1972.

14. The learned advocate for the petitioner Mr. Shah has further urged before me that in view of the decision of this court in the case of SAMUEL JOSEPH VAMESHA Vs. STATE OF GUJARAT & ANOTHER - 1996(1) G.L.H. 518, the State of Gujarat should be held liable to pay the amount of gratuity payable by the petitioner to its employees. In that case of Samuel Joseph Vamesha (Supra), the petitioner was an employee of the Gujarat State Bharat Scouts and Guides Sangh. The learned Single Judge of this court has held in that case that Bharat Scouts and Guides which is basically an organization to train the students right from their student life as to how they

have to behave like ideal citizens to help any person anywhere in difficulty and that organizations are meant basically for the welfare of the people and society at large and for that purpose 100% grant was being paid by the State Government. Therefore, in view of those peculiar facts, the State Government is directed to reimburse the employer for its liability to make payment of the gratuity. But the petitioner-institute before this court is not only giving training but it is also having the production on the industrial basis and selling the same. Therefore, it could not be said to be a pure voluntary organization imparting training as Bharat Scouts and Guides. Therefore, I am unable to accept the contention that the State Government should reimburse the petitioner for the liability to make payment of the gratuity.

15. Thus in view of the above discussion, I hold that the orders passed by the respondents no.2 and 3 are quite proper and just and no interference is called for the same by exercising the powers under Article 226 and 227 of Constitution of India. I, therefore, hold that the present petitions will have to be dismissed. The amount of gratuity which has been deposited by the petitioner as per the order in question should be paid to the workmen on or before 11th September, 1998.

16. Thus in view of the above, Rule is discharged in each of the petitions as indicated above. But in the circumstances of the case, parties are directed to bear their respective costs.

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